IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1125 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 1126 OF 2004

Mrs. Ramona M. Chandiramani ...Petitioner

Versus

Dishit Industries Ltd. & Ors ...Respondents

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Mr. Tejas D. Deshmukh, Advocate for Petitioner

Mr. Vinodkumar S.Katkar, Adv. for Respondent No.3.

Ms. S.V. Gajare, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 19TH SEPTEMBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner i.e. original accused No.3 and the learned advocate for respondent No.3 i.e. original complainant. The learned advocate for the petitioner on instructions states that the petitioner is willing to settle the matter with the complainant i.e. the respondent No.3 as the petitioner is willing to hand over the disputed amount which the complainant is liable to pay. However, the learned advocate for the respondent i.e. original complainant states that the complainant is not willing to settle the dispute and would like to go on with the trial.

2. The petitioner has been prosecuted under Section 138 r.w. 141 of Negotiable Instruments Act. The petitioner had preferred an application for recall of process before the learned Magistrate. The said application came to be rejected by the learned Magistrate. Being aggrieved thereby, the petitioner preferred revision Application No. 186 of 2004 before the learned Sessions Judge. The said revision also came to be dismissed. Hence, through these petitions, the petitioner is seeking to set aside both the orders passed by the learned Magistrate as well as the learned Sessions Judge.

3. The main contention of the petitioner is that at the time when offence was committed the petitioner was not in charge or responsible to the company or the conduct of its business. It is an admitted fact that the petitioner No.1 is director of the said company. There are only two directors of the accused-company i.e. the petitioner who is accused No.3 and her husband who is accused No.2. I have perused the complaint. In the said complaint, it is clearly stated that both accused Nos. 2 and 3 are the working directors of the company and are in charge of the management or conduct of business of accused No.1. The Supreme Court in the case of **K.P.G. Nair Vs. Jindal Menthol India Ltd. reported**

in JT 2000 (Supp.) SC 519, has observed that though the words of Section 141(1) of the said Act need not be incorporated in a complaint as magic words, substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision. In the present case, on reading the complaint as a whole, it is clear that according to the complainant, the applicant was in charge of and was responsible to the Company for the conduct of its business. In the present case, on reading the averments in para No.2 of the complaint and other averments in the complaint, I am of the view that the requirements of Section 141 of Negotiable Instruments Act are met.

5. Moreover, in the case of **Gujrat State Fertilizer Company Ltd. and Anr. (2005) 4 Comp. LJ. 493 (SC),** the Supreme Court observed whether a person is in charge or responsible to the company for conduct of the business is to be adjudicated on the basis of the materials to be placed by the parties. It is further observed that whether the allegations are sufficient to attract culpability, is a matter for adjudication at the trial. Thus, in this view of the matter, I am not inclined to quash the proceedings in respect of the petitioner at this stage. Hence, petitions are dismissed.

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